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November 5, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: AMERICAN TELEPHONE AND TELEGRAPH
COMPANY

Petition for the Establishment of
Additional Standards to Govern
Study Area Boundary Changes in
Connection with the Transfer of
Service Territories Between or
Among Local Exchange Carriers

R. M. 8334

Dear Mr. Caton:

Enclosed herewith for filing with the Commission are the original
and five copies of the National Exchange Carrier Association,
Inc.'s Reply in the above-captioned matter.

Please acknowledge receipt hereof by affixing a notation on the
duplicate copy of this letter furnished herewith for such
purposes and remitting same to bearer.

Very truly yours,

Joanne S. Bochis
Joanne S. Bochis *JSB*

JSB/bas
Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

AMERICAN TELEPHONE AND)
TELEGRAPH COMPANY)

Petition for the Establishment)
of Additional Standards to Govern)
Study Area Boundary Changes in)
Connection with the Transfer of)
Service Territories Between or)
Among Local Exchange Carriers)

RM 8334

REPLY

The National Exchange Carrier Association, Inc. (NECA)¹ submits this Reply in support of the other eleven comments filed in response to AT&T's September 3, 1993, rulemaking petition in the above-captioned proceeding.² In its petition, AT&T proposes that the Commission require exchange carrier (EC) submission of detailed information in connection with transfers of service territories between and among telephone companies.³ All of the commenters in this proceeding urged the Commission to deny AT&T's petition.

¹ NECA is a not-for-profit membership association of local exchange carriers. NECA members serve over 1400 study areas.

² In addition to NECA, the following parties filed comments on AT&T's Petition on October 20, 1993: Cathy, Hutton and Associates (CHA), GTE Service Corporation (GTE), National Rural Telephone Association (NRTA), National Telephone Cooperative Association (NTCA), Pacific Telecom (PTI), Pacific Telesis (Pacific Companies), Rochester Telephone Corporation (Rochester), Southwestern Bell Telephone Company (SWBT), United States Telephone Association (USTA), United and Central Telephone Companies (United), and U S WEST Communications, Inc. (U S WEST). CHA characterized its comments as an Opposition.

³ AT&T Petition at 1-2.

I. RULES REQUIRING ADDITIONAL REPORTING REQUIREMENTS ARE UNNECESSARY.

As NECA stated in its Comments, the imposition of inflexible reporting requirements is not necessary.⁴ Several commenters assert that the Commission's September 7, 1993, Public Notice⁵ makes AT&T's petition moot or unwarranted.⁶ CHA states that this Public Notice is more focused and relevant to the waiver process than the approach advocated by AT&T.⁷ NECA and other commenters demonstrate that ECs have provided sufficient information prior to the Public Notice and will certainly comply in the future to avoid any unreasonable delay in the grant of their study area waivers.⁸

The Pacific Companies state that the major difference between the Bureau's Public Notice and AT&T's petition is that AT&T makes the requirements mandatory.⁹ It further states that waivers by their nature deal with individual conditions and consequently a flexible approach as set out in the Bureau's Public Notice is reasonable.¹⁰ USTA asserts that the Commission should continue to

⁴ NECA Comments at 1.

⁵ Public Notice, "Bureau Provides Suggestions for Parties Filing Study Area Waiver Requests," (DA 93-1093), released September 7, 1993.

⁶ See e.g. NTCA at 8.

⁷ CHA at 4.

⁸ See NECA at 3-4 and notes 5 and 6, GTE at 6, Rochester at note 8, CHA at 3 and NTCA at note 11 stating that "delay not only means that the citizens of the area are denied badly needed service improvements, but also there will likely be changes in financing terms and construction costs."

⁹ Pacific Companies at 2.

¹⁰ Id.

allow ECs the latitude of submitting supporting data if they deem it necessary to do so.¹¹ SWBT agrees that the Common Carrier Bureau's "approach of treating each application on an ad hoc basis is much more flexible and adaptive to unusual circumstances than would be the rules championed by AT&T."¹²

U S WEST maintains that there is no reason whatsoever to codify these same information requirements into the Commission's rules, in part because the standards for evaluating waivers are not themselves codified.¹³ Rochester believes that the proposed requirements would be burdensome and largely unnecessary for Commission evaluation of proposed transfers and study area waiver requests. GTE supports data requirements that cover objective, relevant information but believes that subjective, speculative information should not be made a requirement of a waiver request.¹⁴

As NECA and these commenters have pointed out, adoption of rules requiring additional data reporting is unnecessary and inconsistent with the Commission's longstanding commitment to lessening regulatory burdens. In addition, many commenters have

¹¹ USTA at 3. See also note 5 in which USTA states that certain information requirements proposed by AT&T are outside the scope of a study area waiver request. See also GTE at note 2 which states that "many transactions . . . are so small or their merits are so clear-cut that there is no need for extensive data submissions."

¹² SWBT at 3.

¹³ U S WEST at 2-3 and note 8.

¹⁴ GTE at 6.

argued that AT&T's factual assertions are unsupported and do not demonstrate a need for a rulemaking.¹⁵

II. THE WAIVER PROCESS SHOULD BE STREAMLINED.

As NECA proposed in its Comments, the Commission should streamline the process for obtaining waivers of the frozen study area boundary rule by adopting rule revisions proposed in CC Docket No. 80-286 that have been pending since 1990.¹⁶ The waiver procedures proposed in that proceeding will reduce unnecessary paperwork and delay, while allowing the Commission the flexibility to obtain additional information on particular transactions where necessary.

NTCA states that the Commission cannot rationally grant AT&T's petition while its own 1990 tentative conclusions and proposed rules remain pending.¹⁷ GTE also argues that the Commission should adopt rule modifications that make processing of study area waivers more efficient, as it proposed in 1990 in CC Docket No. 80-286.¹⁸

NECA agrees with these views, and urges the Commission to move forward with implementing the rules proposed in CC Docket No. 80-286. This will streamline the study area waiver process without

¹⁵ See PTI at 6-8, NRTA at 6-7, U S WEST at 5, NTCA at 2-3 and CHA at 2.

¹⁶ NECA at 5, referring to Amendment of Part 36 of the Commission's rules and Establishment of a Joint Board, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990).

¹⁷ NTCA at 9.

¹⁸ GTE at 6.

sacrificing the information necessary for reasonable Commission evaluation of study area waivers.

III. INTERIM MODIFICATIONS TO THE USF ARE NOT RELEVANT TO THIS PROCEEDING.

In its Comments, NECA stated that payments to the Universal Service Fund (USF) and pool participation decisions should be made in accordance with the Commission's rules as written.¹⁹ NECA further stated that policy rule revisions should be made, if at all, only after comprehensive review by the Commission, the Joint Board and the industry.²⁰

Rochester, U S WEST, SWBT, Pacific Companies and United suggest that USF reform proposals are better addressed in a comprehensive USF proceeding.²¹ NECA agrees with these parties that AT&T's attempt to incorporate USF policy issues in study area waivers should be denied, and instead considered in the overall USF review.

¹⁹ NECA specifically objected to AT&T's support for capping USF changes associated with individual transfers. NECA at 8.

²⁰ Id. The Commission has referenced such a proceeding in Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 93-435, released Sept. 14, 1993.

²¹ Rochester at 2 and note 6, U S WEST at 5, SWBT at 3, Pacific Companies at 2 and United at 1-2 (referencing AT&T proposals related to USF growth).

IV. CONCLUSION

NECA and the other parties filing comments in this proceeding, unanimously agree that AT&T's Petition should be denied for the reasons discussed above. The Commission has already addressed AT&T's information concerns in its September 7, 1993, Public Notice and any USF policy issues should be reviewed in the upcoming Joint Board USF proceeding. NECA again urges the Commission to adopt the streamlined study area waiver rules proposed in 1990.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By:


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Its Attorney

November 5, 1993

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Replies were served this 5th day of November, 1993, by mailing copies thereof by United States Mail, first class postage paid, to the persons listed.

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Christine DeCarlo

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